



September 21, 2000

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2000-3667

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140793.

The Texas Department of Criminal Justice (the "TDCJ") received a request for information related to the internal affairs investigation of the requestor, a former TDCJ employee. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107(2), 552.108, 552.117, and 552.131 of the Government Code. You also argue that certain probation information is not subject to the Public Information Act. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131(a) relating to TDCJ inmates states:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.131(a). After careful review, we conclude that some of the submitted information is protected under section 552.131 and must, therefore, be withheld. However, several of the submitted documents do not identify inmates and, therefore, are not protected by section 552.131. Further, section 552.131 is subject to section 552.029. "Basic" information about an alleged crime involving an inmate is made public by section 552.029(8).

You assert that the responsive information is excepted from disclosure by section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You relate that the responsive information consists of two investigations which arise from the same facts. One of the investigations is criminal, the other an investigation into employee misconduct. You assert that neither of these cases is complete. From your assertions and our review of the submitted information, we conclude that the responsive information relates to an ongoing investigation into a criminal violation

Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that TDCJ may withhold responsive information under section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Where this information involves an alleged crime involving an inmate, the information is the same as that made public by section 552.029(8). Thus, with the exception of the basic front page offense report information, you may withhold the submitted information from disclosure based on section 552.108(a)(1).

You relate that you "do not believe that the inmate's identity is a matter of public record." However, you do not assert an exception to disclosure that you contend applies to this information. From our review of the submitted information we conclude that this identity is not confidential. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

As the "basic" information responsive to this request is not excepted from disclosure by any of the exceptions that you raise, and the balance of the information is found to be excepted, we do not address your other arguments for withholding this information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

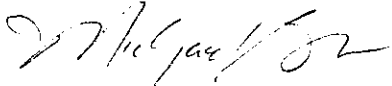
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns", with a stylized flourish at the end.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 140793

Encl: Submitted documents

cc: Mr. Doris R. Searcy  
4421 Brookdale Drive  
Brownwood, Texas 76801  
(w/o enclosures)